

April 29, 2004

17972.0101

VIA CERTIFIED RETURN RECEIPT U.S. MAIL

Office of Insurance Commissioner
5000 Capital Boulevard
P.O. Box 40255
Olympia, WA 98504-0255

Attn: Kristofer Graap

Re: Viatical Settlement Provider Application for Viatical Benefactors, LLC
Appeal of Commissioner's Ruling

Dear Commissioner

Our office is retained to represent Viatical Benefactors, LLC ("Viatical Benefactors") in the matter of its application for a Provider License. That application was denied by the OIC's letter dated February 2, 2004, a copy of which is attached as Exhibit A. Viatical Benefactors, LLC hereby demands a hearing on its application pursuant to RCW 48.04.010 (3) on the grounds that the Office of Insurance Commissioner's denial of Viatical Benefactors, LLC's application for a Provider License is improper, without foundation, arbitrary, and capricious. The Commissioner's action violates Viatical Benefactors' right to due process.

Viatical Benefactors, LLC requests that the hearing in this matter be presided over by an administrative law judge assigned under Chapter 34.12 RCW. This request is made pursuant to RCW 48.04.010 (5).

Viatical Benefactors contends as follows:

- Mutual Benefits Corporation ("MBC") is not an officer, partner, stockholder, or employee of Viatical Benefactors; therefore, the Commissioner erred in relying on RCW 48.102.010(4)(b) as grounds for denying a Provider License to Viatical Benefactors;
- Viatical Benefactors owns the policies which are the subject of its viatical settlement agreements; therefore, the Commissioner erred in relying on RCW 48.102.045 in denying Viatical Benefactors' application for a Provider License;
- Viatical Benefactors' application for a Provider License meets the criteria stated in RCW 48.102.010(5); therefore, a Provider License should issue to Viatical Benefactors.

RECEIVED
APR 30 2004
INSURANCE COMMISSIONER
COMPANY SUPERVISION

A. Mutual Benefits Corporation is not Related to Viatical Benefactors, and the Commissioner Erred in Relying on RCW 48.102.101(4)(b) in Denying Viatical Benefactors' Application for a Provider License.

Viatical Benefactors is a limited liability company. It is wholly owned by Richard Meekins. Ex. C(2)(A-C) at 13-31. Mr. Meekins is the sole owner, officer and employee of Viatical Benefactors. Ex. C(2)(D) at 33. RCW 48.102.010(4)(b) provides in pertinent part as follows:

The commissioner may refuse to issue or renew a license if he or she is not satisfied that any officer, partner, stockholder, or employee thereof, who may materially influence the conduct of the applicant or licensee, meets the standards required by the public interest. (emphasis supplied.)

The Commissioner does not articulate any criticisms of Viatical Benefactors or Mr. Meekins. Therefore, the Commissioner must concede that the applicant and Mr. Meekins meet the "the standards required by the public interest."

The Commissioner's sole concern with respect to this statute relates to a separate and unrelated company, MBC. MBC is not an officer, partner, stockholder or employee of Viatical Benefactors. Ex. C(2)(D) at 33. Therefore, reliance on RCW 48.102.101(4)(b) is misplaced and cannot support a denial of Viatical Benefactors Provide License application.

B. RCW 48.102.045 Does Not Apply to This Application Because Viatical Benefactors Will Own All of the Policies.

The Commissioner appears to further misunderstand the business plan submitted by Viatical Benefactors. See Ex. C(2)(J) at 84-98. RCW 48.102.045 provides in pertinent part that

[a] viatical settlement provider shall not directly or indirectly assign, transfer, sell, resell, or transfer by gift or bequest, or otherwise convey any insurance policy that has been the subject of a viatical settlement agreement to any person, custodian, investor, investor group, or other entity that does not hold a Washington license as a viatical settlement provider, issued by the commissioner.

Here, Viatical Benefactors owns all of the policies which are the subject of its viatical settlement agreements. Ex. C(2)(J) at 88. Viatical Benefactors does not plan to or contemplate transferring ownership of the policies or other contracts to anyone. Id. Even if it did, which it will not, such a transfer is void as a matter of law. RCW 48.102.045(2).

Furthermore, contrary to the Commissioner's assertion, MBC will not be a beneficiary of any of the policies. Id. The beneficiaries will be the individual investors (the funding sources) in the policies themselves. Id. A beneficial interest is defined in Black's Law Dictionary as

[a] right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing.

Black's Law Dictionary, 7th Edition, 1999. See also Restatement (Second) of the Law of Trusts, § 175 (1959). The investor's interests created here beneficial interests and are not ownership or control interests. Rather, they are passive interests that entitle the holders of the interests the right to receive benefits due under a trust or contract. Traditionally, and in this context, a beneficiary has no discretion or authority to manage the asset that is the subject of the agreement. Id. Therefore, the Plan of Operation submitted by Viatical Benefactors does not violate RCW 48.102.045, and that statute cannot be a basis for denying Viatical Benefactors a Provider License.

C. Viatical Benefactors' Application for a Provider License Meets the Criteria Stated in RCW 48.102.010(5), and the Commissioner Should Issue Viatical Benefactors a Provider License.

1. Viatical Benefactors provided a detailed and adequate plan for operation.

Viatical Benefactors' plan for operation submitted as Exhibit II(J) of its application is included here at Ex. C(2)(J) at 85-98. The plan contemplates, among other things, that Viatical Benefactors will receive applications from licensed viatical brokers. Id. at 86. The viator has the right to review the proposal and to rescind a viatical settlement agreement within 15 days of receipt of the viatical settlement proceeds so long as the proceeds are returned. Id. at 86; see also Ex. C(3) at 104-133. Further protections for the viator are in place including completing the transaction through a licensed escrow agent. Ex. C(2)(J) at 85-98. The viatical settlement proceeds and the viator's identification of beneficiaries are deposited into escrow with instructions to disburse the funds when the assignment of benefits is received. Id. See also Ex. C(3) at 104-133.

2. Viatical Benefactors is competent and trustworthy and intends to act in good faith in the viatication of life insurance policies.

Viatical Benefactors is licensed as a Viatical Settlement Provider in California and Texas. Ex. C(2)(F) at 43-48. Since the time the subject application was submitted, Viatical Benefactors received Provider Licenses in a number of other states including Nevada, North Dakota, Tennessee, and Indiana. Viatical Benefactors has never failed to fulfill its obligations to any viator or investor. Ex. B. The evidence shows that Mr. Meekins is an experienced business person with an unblemished reputation in this business. Ex. C(2)(E) at 34-41. He has devoted many community service hours to the terminally ill and has been a tireless fund raiser for services benefiting those patients. Id. at 041.

3. Viatical Benefactors has a good business reputation as well as the experience, training, or education to qualify as a viatical settlement provider.

Viatical Benefactors has been providing viatical settlement services since 1998. Ex. C(2)(d) at 33 and C(2)(E) at 41. Viatical Benefactors' verified application highlights its reputation in the business community and Mr. Meekins reputation, as well. Ex. C(2)(E) at 34-41 and Ex. C(2)(H) at 60-72. Neither the company nor Mr. Meekins have been involved in criminal matters or matters of financial insolvency. Id. and Ex. C(2)(I) at 75-84. Prior to his retirement, Mr. Meekins was a career marketing executive with IBM. Id. at 41. Mr. Meekins has thirty two years of executive management experience, and he has eight years of experience as either a paid director or an unpaid volunteer in a community clinic dealing with the terminally ill. Id. Mr. Meekins is uniquely qualified to manage Viatical Benefactors and to serve the needs of this group of insureds.

4. Viatical Benefactors is properly registered to do business in this State.

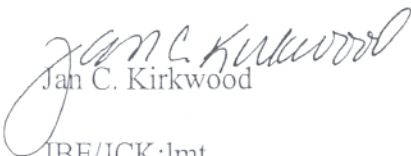
Viatical Benefactors is properly registered as a foreign limited liability company since March 24, 2003. See Ex. C(G) at 51-58.

In summary, Viatical Benefactors' application and subsequent submissions to the OIC satisfy the requirements of RCW 48.102.010(5), and Viatical Benefactors is entitled to a Provider License issued by the Commissioner. See Exhibit C.

Very truly yours,

WILLIAMS, KASTNER & GIBBS PLLC


Gary B. Edmonds


Jan C. Kirkwood

JBE/JCK:lmr

Enclosures: Ex. A 02/02/04 letter from OIC
Ex. B 11/14/03 letter from J. Sparkes
Ex. C Viatical Benefactors, LLC's Application for Provider License